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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,623	09/25/2003	Gregory Kintzele	5044	6733

7590

10/22/2004

John E. Reilly  
1554 Emerson Street  
Denver, CO 80218

EXAMINER
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KING, ANITA M

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 10/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/670,623	<b>Applicant(s)</b> KINTZELE ET AL.	
	<b>Examiner</b> Anita M. King	<b>Art Unit</b> 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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This is the second office action for application number 10/670,623, Elastic Article Suspension Device for an Infant, filed on September 25, 2003.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 5-7, 10, 12, 13, 15, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 2,819,923 to Anderson in view of U.S. Patent 4,253,544 to Dalmaso. Anderson discloses an article suspension device (5), comprising: encircling means (9) for surrounding an object (7); an adjustable elastic loop (10); a single length of cord (8) having a first end secured to the elastic loop and a second end secured to the encircling means; wherein the encircling means comprises a free end portion releasably secured to a base portion of the encircling means; wherein the elastic loop is formed as a continuation of the cord; wherein the elastic loop includes means for adjusting (12) a length of the loop and the cord; wherein the adjusting means is defined by a body member having a first material-receiving slot (13) and a second material-receiving slot (14), the first material-receiving slot extending along a parallel axis with the second material-receiving slot; and wherein the means (12) for releasably engaging the cord includes a clamping member (15) for securely engaging a length of the cord.

Anderson discloses the claimed invention except for the limitation of the cord being elastic. The cord in Anderson is constructed of a flexible material such as steel

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wire cable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the material of the cord in Anderson to have been constructed of an elastic material for the purpose of providing an alternative, flexible, mechanically equivalent material for the cord based on the materials suitability for the intended use and since such a modification would not have produced any unexpected results.

Anderson discloses the claimed invention except for the limitation of a cover extending between the first end and the second end of the cord. Dalmaso teaches an article suspension device (10) comprising a single length of cord (14) having a first end secured to a loop and a second end, the cord including a cover (16) extending between the first end and the second end of the cord in outer surrounding relation to the cord, the cover being stretchable a predetermined distance between a retracted position and an extended position in response to stretching the cord, and wherein the cover includes a fabric sleeve. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device in Anderson to have included the cover as taught by Dalmaso for the purpose of providing a means for providing shock absorption to the device to dissipate the shock forces generated by a rapidly decelerating object.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson combined with Dalmaso and in further view of U.S. Patent 4,095,316 to Gabriel. Anderson combined with Dalmaso disclose the claimed invention except for the limitation of the encircling means being a carabiner. Gabriel teaches that it is known to

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have a carabiner for securing an object therein. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the encircling means in Anderson combined with Dalmaso to have included a carabiner as taught by Gabriel for the purpose of providing an alternative means for attaching the device to a stationary object having a different size and shape than that of a rod or bar.

Claims 3, 8, 9, 14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson combined with Dalmaso and in further view of U.S. Patent 6,029,870 to Giacona, III, hereinafter, Giacona. Anderson combined with Dalmaso disclose the claimed invention except for the limitations of the base portion of the encircling means having a snap fastener or releasable handle and the adjusting means having a slidable gate. Giacona teaches an article suspension device having an encircling means (11) for surrounding an object and including a free end portion and a base portion, wherein the free end portion is secured to the base portion by a snap fastener or releasable handle (14), and elastic loop (26) including a slidable gate (39) normally urged to a closed position by a spring member (42), and wherein a combination of the slidable gate in an open position and the spring form an unobstructed passage through which the length of a cord (27) may pass. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device in Anderson combined with Dalmaso to have included the snap fastener and adjusting means as taught by Giacona for the purpose of providing alternative, mechanically equivalent, and more efficient means for attaching the base portion and the free end portion of the encircling means together to form a loop and for

easily adjusting the size of the elastic loop for accommodating objects having various sizes and shapes.

Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,082,220 to Pollock et al., hereinafter, Pollock in view of Dalmaso and Anderson. Pollock inherently teaches a method of suspending an object (22) for an infant, comprising the steps of: attaching a first end of a length of cord (20) to an adjustable loop (28); forming a continuous loop (32) at an opposite end of the cord; positioning an object within the adjustable loop and encircling the loop around the object; and securing the continuous loop to a highchair (10).

Pollock discloses the claimed invention except for the limitation of enclosing the length of cord with a cover. Dalmaso teaches an article suspension device (10) comprising a single length of cord (14) having a first end secured to a loop and a second end, the cord including a cover (16) extending between the first end and the second end of the cord in outer surrounding relation to the cord, the cover being stretchable a predetermined distance between a retracted position and an extended position in response to stretching the cord, and limiting the extent of the stretch. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device in Anderson to have included the cover as taught by Dalmaso for the purpose of providing a means for providing shock absorption to the device to dissipate the shock forces generated by a rapidly decelerating object.

Pollock combined with Dalmaso disclose the claimed invention except for the limitation of adjusting the length of cord. Anderson teaches a suspension device

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comprising a cord (8), and means (12) for adjusting the length of the cord. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the cord in Pollock combined with Dalmaso to have included a means for adjusting the length of the cord for the purpose of accommodating the user by varying the height of the device from the highchair to the suspended object.

### ***Response to Arguments***

Applicant's arguments filed August 9, 2004 have been fully considered but they are not persuasive. The reference to Anderson still applies to claims 1, 5-7, and 10.

Applicant's arguments with respect to claims 4, 8, 9, 12-20 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument that it would not be desirable to make the cord in Anderson elastic, the cord in Anderson currently has a degree of flexibility, the term elastic is defined as a flexible, stretchable fabric made of interwoven strands of rubber and thus, it would have been obvious to have substituted one flexible material for the another flexible material depending on the degree of elasticity of the material.

In response to applicant's argument that Anderson is used for the suspension of animal carcass from a tree, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference

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as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). It is noted that the Anderson reference is used for another purpose however; it is feasible for using the suspension device in Anderson in different environments.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (703) 308-2162. The examiner can normally be reached on Monday-Friday.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Anita M. King  
Primary Examiner  
Art Unit 3632

October 19, 2004